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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No. EB-02-PA-298
	)	
New York Radio Service	)	NAL/Acct. No. 200332400005
WPTM988	)	
Brooklyn, New York	)	FRN: 0005-1516-83
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: January 6, 2003**

By the District Director, Philadelphia Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that New York Radio Service ("NYRS") has apparently violated Section 1.903(a) of the Commission's Rules (the "Rules").<sup>1</sup> This violation occurred because NYRS operated station WPTM988 on the frequency 452.000 MHz at the unauthorized location of 700 Victory Boulevard, Staten Island, New York ("Parkview House"). We conclude that NYRS is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

**II. BACKGROUND**

2. On July 26, 2002, the Philadelphia Office received information that radio-transmitting equipment was being operated at the Parkview House without authorization from the Commission. On July 30, 2002 and July 31, 2002, FCC agents from the Philadelphia Office and New York Office conducted an investigation into the complaint. Between 7:00 p.m. and 8:00 p.m. on July 30, 2002 and between 10:00 a.m. and 11:00 a.m. on July 31, 2002, the agents monitored radio communications on the frequency 452.000 MHz and used direction-finding techniques to determine that the source of the radio transmissions was located at the Parkview House.

3. At approximately 3:45 p.m., Mr. Howard Miller, the President of Statcom Communications Corporation, met with the agents and permitted them to inspect the radio equipment in a room on the 14th Floor of the Parkview House. This is the same room where Statcom Communications Corporation operated its UHF trunk radio system. During the inspection, the agents observed a radio transmitter labeled with the frequency 452.00 MHz and the call sign WPTM988. The agents used an Optoelectronics frequency counter to verify that the radio transmitter operated on the frequency 452.000 MHz. During the inspection, Mr. Miller stated that he installed the 452.000 MHz radio transmitter at the Parkview House for NYRS because they

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<sup>1</sup> 47 C.F.R. § 1.903(a).

wanted to test the coverage of their 452.000 MHz radio transmitter from this alternate site.

4. On September 4, 2002, the Philadelphia Office issued a Notice of Violation (“NOV”) to NYRS for operating a radio transmitter on the frequency 452.000 MHz at an unauthorized location, in violation of Section 1.903(a) of the Rules. In the Notice of Violation, the Philadelphia Office stated that although NYRS was authorized to operate station WPTM988 on the frequency 452.000 MHz at 1633 Broadway, New York, New York, it was operating the station on July 30, 2002 and July 31, 2002 at the Parkview House.

5. On September 30, 2002, Ms. Elizabeth Sachs of Lukas, Nace, Gutierrez & Sachs submitted a response to the NOV on behalf of NYRS. In the response, Ms. Sachs acknowledged the violation and stated that NYRS inadvertently relocated station WPTM988 prior to receiving conditional authority to operate the station at the Parkview House.

### **III. DISCUSSION**

6. Section 1.903(a) of the Rules states that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part. On July 30, 2002 and July 31, 2002, NYRS operated a radio transmitter on the frequency 452.000 MHz at the Parkview House, 700 Victory Boulevard, Staten Island, New York. The license for station WPTM988 authorizes NYRS to operate a radio transmitter on the frequency 452.000 MHz at 1633 Broadway, New York.

7. Based on the evidence before us, we find that NYRS willfully<sup>2</sup> and repeatedly<sup>3</sup> violated Section 1.903(a) of the Rules. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303(1999) (“*Forfeiture Policy Statement*”),<sup>4</sup> sets the base forfeiture amount for construction or operation at an unauthorized location at \$4,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934,<sup>5</sup> (the “Act”), as amended, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a four thousand dollar (\$4,000) monetary

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C § 503(b)(2)(D).

forfeiture is warranted.

#### **IV. ORDERING CLAUSES**

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>7</sup> NYRS is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for its operation of station WPTM988 at an unauthorized location.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, NYRS SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332400005 and FRN: 0005-1516-83.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332400005 and FRN: 0005-1516-83.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate

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<sup>6</sup> 47 U.S.C § 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111 and 0.311.

<sup>8</sup> See 47 C.F.R. § 1.1914.

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whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to New York Radio Service, 927 McDonald Avenue, Brooklyn, New York 11218, and to Lukas, Nace, Gutierrez & Sachs, 1111 Nineteenth Street, N.W., Suite 1200, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes  
District Director  
Philadelphia Office

Attachment A – FCC's List of Small Entities